

**Local Union No. 2362, Lumber, Production and Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Phost Construction, Inc. Case 19-CC-1285**

January 4, 1982

### DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On March 27, 1981, Administrative Law Judge Burton Litvack issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge as modified herein and to adopt his recommended Order.

We agree with the Administrative Law Judge that, at the time of the October 16 meeting between Michael Draper, representative of Respondent Carpenters, and Jerome Rubin, attorney for Alaska Lumber and Pulp Company (ALP), Rubin was not an agent of Phost Construction, Inc., the Charging Party. More importantly, we think that the same circumstances that indicate lack of agency status also demonstrate that Draper's threat to picket was aimed at ALP, not at Phost.

In addition to the persuasive evidence with regard to agency cited by the Administrative Law Judge, we rely on the following facts. At the July 21 meeting where Rubin presented a proposed contract between Respondent and Phost, he did so in the presence of a Phost officer. When Respondent presented its counterproposal to Rubin on August 21, it does not appear that any negotiations occurred; rather, Rubin simply agreed to transmit the proposal to Phost. After that, there were apparently no further negotiations between Respondent and Phost, through Rubin or otherwise. Rather, Phost entered into a collective-bargaining agreement with another union. Draper testified that, at the meeting of October 16, he "assumed" that Rubin represented Phost as well as ALP, but it does not appear that Draper said so at the meeting. Moreover, his assumption should have been dispelled when Rubin was unable to answer questions on Phost's behalf. By Rubin's own testimony and that of Kurt Sachnitz, an officer of ALP, Rubin said only that he had heard "rumors" that Phost had signed an

agreement with the Paperworkers and, when Draper asked if they had agreed to \$21 an hour, Rubin said, "Not to my knowledge."

Even if Draper thought that Rubin continued to represent Phost in certain matters, it does not follow that he intended to threaten Phost on October 16. Rubin's principal role was as attorney for ALP, and Draper had dealt with him in the past in that capacity. The main focus of the negotiations, and especially of the October 16 meeting, was the proposed contract between Respondent and ALP. Draper's threat to picket was calculated to apply economic pressure on ALP—the only party that could meet Draper's demand—and in these circumstances we conclude that Draper was communicating that threat to ALP through its representative, Rubin. We therefore conclude that Draper's threat did not have as an object that Phost cease doing business with ALP, and thus we find that the General Counsel has failed to show that Respondent violated Section 8(b)(4)(ii)(B) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

### DECISION

#### STATEMENT OF THE CASE

BURTON LITVAK, Administrative Law Judge: This case was heard before me in Seattle, Washington, on December 18, 1980, based upon a charge filed by Phost Construction, Inc., herein called Phost, on October 27, 1980, and a complaint and notice of hearing, which was issued by the Regional Director for Region 19 of the National Labor Relations Board, herein called the Board, on November 28, 1980. The complaint, in substance, alleges that agents of Local Union No. 2362, Lumber, Production and Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Respondent, engaged in acts and conduct violative of Section 8(b)(4)(ii)(B) of the National Labor Relations Act, as amended, herein called the Act, by threatening a common representative of Alaska Lumber and Pulp Co., Inc., herein called ALP, and Phost that it would picket a Phost construction site in an attempt to shut down construction work, with objects thereof to force Phost and other persons engaged in commerce to cease doing business with ALP; or to force ALP to recognize or bargain with Respondent. Respondent filed an answer which, in substance, denied that it engaged in any conduct violative of the Act. At the hearing the General Counsel, the Charging Party (Phost), and Respondent were represented by counsel and were afforded full opportunity to

present oral and written evidence and argument and to examine and cross-examine witnesses. Post-trial briefs have been filed on behalf of all parties and have been carefully considered. Upon the entire record, careful observation of the demeanor of the witnesses, and post-hearing briefs, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

The parties stipulated that Phost is an Alaska corporation, with an office and place of business near Wrangell, Alaska, where it is engaged in the business of constructing a sawmill, and that during the past 12-month period immediately preceding issuance of the complaint, which period is representative, in the course and conduct of its business operations, Phost provided services valued in excess of \$50,000 to customers within the State of Alaska, which customers were engaged in interstate commerce by other than indirect means. Accordingly, Respondent admits, and I find, that Phost is now, and has been at all times material herein, an employer and person engaged in commerce and in industries affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all times material herein, it has been a labor organization within the meaning of Section 2(5) of the Act.

#### A. Issue

Did Respondent engage in acts and conduct violative of Section 8(b)(4)(ii)(B) of the Act by, on or about October 16, 1980,<sup>1</sup> through its agent Michael Draper, threatening a representative of both ALP and Phost that it would picket a Phost construction site in an attempt to shut down construction work, with objects thereof to force Phost and other persons to cease doing business with ALP; or to force or require ALP to recognize and bargain with Respondent?

#### B. Facts

ALP is a subsidiary of Alaska Pulp America, Inc., and is engaged in the production of dissolving pulp and lumber in the State of Alaska, with its products shipped primarily to Japan. In furtherance of its operations ALP maintains a dissolving pulp plant in Sitka and, until April 1, utilized two sawmills in a small town called Wrangell which is located on remote Wrangell Island. Regarding the two sawmills, one is located inside the town and employs approximately 65 to 70 workers who are represented for purposes of collective bargaining by a local of the United Paperworkers International Union, herein called the UPIU. The downtown sawmill, herein called the Wrangell mill, is used by ALP primarily for the cutting of larger spruce logs. The other sawmill was located 6 miles outside Wrangell on the Zimovia Highway and

was known as the 6-mile mill or AWP mill.<sup>2</sup> This sawmill employed approximately 50 to 55 persons, who were represented for purposes of collective bargaining by Respondent, and cut primarily "baby squares" or four-by-four lumber pieces.

James Rynearson, a senior vice president of ALP, testified that, due to expected environmental problems caused by the proposed Alaska Lands Bill which, by its terms, restricted the quality and quantity of timber available for cutting in certain areas of the State, the decision was made by ALP in 1977 to study the feasibility of constructing a new type of sawmill, which would use a lesser type and quality log and which would continue to permit ALP to be operational in Wrangell. As a result, the company officials concluded that this new mill should have the same production capacity as the two existing sawmills combined and that, inasmuch as the AWP site encompassed a greater physical area and as there was no room for expansion of the Wrangell mill, it should be constructed on the AWP millsite. Accordingly, Rynearson testified, in early 1980 with passage of the new legislation imminent, ALP decided to implement its aforementioned plans. Both Respondent and the UPIU were receptive to the proposed consolidation of operations, agreeing that such was essential if ALP was to remain competitive.

As an initial step, ALP commenced negotiations with Phost regarding the latter becoming the general contractor for the anticipated construction operations. While said discussions were ongoing, ALP commissioned engineering plans for the project and, in view of weather problems, concluded that construction work on the project had to commence no later than July 15. Therefore—and to apparently have sufficient time to prepare the site for said work, production operations at the AWP mill were "closed down" on April 1, and a portion of the work force was given jobs on a new second shift at the Wrangell mill.<sup>3</sup> Also at approximately the same time, pursuant to the terms of the existing collective-bargaining agreement between ALP and Respondent, which was due to expire on May 31, Respondent sent a letter requesting that ALP enter into negotiations on a successor contract. However, no such negotiations ensued.

The record establishes that ALP's construction plans at the AWP site entailed initially increasing the physical area of the entire facility, then demolishing the existing sawmill, and, finally, constructing a new and significantly larger mill building. Left standing and untouched by the construction work were to be a planer shed and sorting area in which the lumber is surfaced, a dock area, a powerhouse building, and a maintenance shed. As to the first aspect of ALP's construction plans—increasing the available physical area, ALP contracted with Berg Construction Company for a landfill operation which would extend the AWP area into Zimovia Strait. Said work

<sup>2</sup> ALP purchased the sawmill from another company, Alaska Wood Products, and apparently assumed the existing collective-bargaining agreement, covering the production and maintenance employees, with Respondent.

<sup>3</sup> Those employees who transferred to the Wrangell mill were required to become members of the UPIU.

<sup>1</sup> Unless otherwise stated herein, all dates are in 1980.

commenced shortly after April 1 and was concluded prior to July. ALP's planning did not escape the notice of the Alaskan construction unions, and shortly after production ceased at the AWP mill in April, representatives of the Alaska Building Trades Council, which comprises those unions engaged in representing employees in the building and construction industry, approached ALP, stating that they understood a new mill was to be constructed at the AWP location and demanding jurisdiction over all the work. Negotiations began with the construction unions and lasted until early June, with ALP insisting that a portion of the work be nonunion to ensure that Wrangell residents, former ALP employees, would be able to work on the project. Finally, agreement was reached that 65 percent of the work, including the actual construction, electrical, landfill, and ducting work, would be performed by employees of union-signatory subcontractors and that 35 percent of the work, including demolition and machine installation work, could be nonunion. Moreover, this latter portion of the work was to be undertaken by Phost, and ALP and the unions reached a further understanding that, while the Phost employees were to be local Wrangell residents and presumably nonunion, it (ALP) would attempt to persuade Phost to negotiate a labor contract, covering said employees, to ensure labor peace on the jobsite.

Meanwhile, while engaging in the aforementioned negotiations, ALP was continuing construction contract discussions with Phost. According to ALP's attorney, Jerome L. Rubin, ALP officials notified Phost about the former's agreement with the Building Trades Council, and Phost consented to abide by it. More specifically, ALP requested that Phost negotiate a labor agreement, and Phost agreed to do so. Phost and ALP reached agreement on the construction contract in late June. Said agreement, which was not executed by the parties until October 22, provides that Phost supply all necessary labor, equipment, and services for completion of the project and perform all work in accordance with ALP's instructions.<sup>4</sup> As to the hiring of subcontractors, the agreement grants to ALP and Phost the right to do so; however, once on the project, subcontractors were to work under the direction of Phost. As to the work, Phost was to be responsible for the engineering work, demolition work, the installation of new machinery, and ensuring that the newly installed machinery was operational.<sup>5</sup>

Subsequent to the agreement between ALP and the Alaskan Building Trades Council and Phost's acceptance thereof, representatives of ALP, Phost, and Respondent met in Portland, Oregon, on July 21. There is some dispute as to which party requested the meeting—Rynearson testified that ALP called for the session, while Respondent's agent, Michael Draper, stated that Respondent requested the meeting to negotiate a new contract with ALP. In any event, Rubin and Rynearson repre-

sented ALP; Attorney Kenneth S. Klarquist represented Phost; and Draper and another official, Robert Westbrook, represented Respondent. While there is no dispute as to the subject matter discussed, there is a slight variance in the record as to what was specifically said at the meeting. According to Rynearson, Respondent, represented by Draper, demanded a 3-year collective-bargaining agreement with ALP to become effective immediately, while Rubin counteroffered to Respondent a 1-year agreement with Phost, covering the construction work. Specifically, Draper proposed a contract identical to the industrywide agreement. Rubin replied that "he thought [a 3-year contract] was highly illegal . . . when we had no production, no members working. . . ." Attorney Rubin corroborated Rynearson, adding that Draper said that a 3-year contract was essential to preserve a "contract bar" argument before the Board and that he could not deviate from such a contract term whatever the economics. Draper testified that two contract proposals were on the table—Rubin's proposal for a contract to cover the "remodernization of the sawmill," between Respondent and Phost, and Respondent's proposal for a new collective-bargaining agreement between ALP and Respondent. The meeting, according to Draper, ended after he set forth Respondent's economic conditions both for a Phost agreement and the successor ALP contract.

The parties next met on or about August 21. Draper and Westbrook again represented Respondent; Rubin, Rynearson, and two others represented ALP; no representatives from Phost were present.<sup>6</sup> The meeting lasted for just a few minutes. According to Rynearson, Draper stated that he did not want a 1-year contract with Phost; rather, he wanted a 3-year contract with ALP. Rubin answered that he did not think such a contract was legal—"that we had no production workers out there, we were not producing anything. . . ." Corroborating Rynearson, Rubin added that he asked Draper to consult with his lawyers concerning the legality of a 3-year contract with ALP in such circumstances. Draper testified that he made an economic counterproposal to the 1-year Phost proposal, and as to the 3-year ALP proposal, Rubin stated that there was not a problem regarding the economics but that he questioned the legality of the contract term. According to Draper, Rubin asked that the parties "enter into a voluntary submission" to the Board concerning the legality of a 3-year contract with ALP. Draper agreed to consult with his attorney, and the meeting ended.

While these negotiations continued, Phost commenced work on constructing the new sawmill building at the AWP site. Thus, site preparation work began on July 7, and demolition of the original mill was accomplished a few days later. Next, in early October work on erecting the new sawmill started, with such performed by employees of subcontractors, all of whom were union mem-

<sup>4</sup> As to ALP's intentions, the signed contract states: "Whereas the Owner desires to renovate its sawmill which is approximately six (6) miles from Wrangell, Alaska. . . ."

<sup>5</sup> Other than as owner and general contractor, there is no evidence in the record of any sort of business or other financial relationship between ALP and Phost.

<sup>6</sup> While Rubin appears to have been the management spokesman at this and the earlier meeting, there is no evidence that such was ever communicated to Respondent or that Rubin ever represented himself as the agent of Phost. In fact, at the hearing, Rubin identified himself as the attorney for ALP. Despite this, because he spoke at the July 21 meeting, Rubin was considered, by Draper, to be the bargaining agent for Phost at the August meeting.

bers. By early December, work on the building skeleton had been completed; all outside sheeting was affixed to the structure; and the roof was in place. Further, all concrete had been poured. The record discloses that, while all this work was done, other than supervisory personnel who may have observed the project from time to time, there have been—and will be—no ALP employees at all on the site during the construction work. Also, according to Ryneerson, no ALP employees have visited the project to maintain equipment in the left-standing structures.

At some point after August 21, Phost and UPIU entered into a collective-bargaining agreement, covering construction work at the AWP site. On or about October 14, Agent Draper telephoned Rubin's office in Seattle, Washington, and requested a meeting. Such was scheduled for October 16 at Rubin's Seattle office, and Rubin asked Kurt Sacknitz, the vice president and treasurer of Alaska Pulp America, Inc., to be present. According to Sacknitz, he, Rubin, and another attorney from Rubin's law firm were present along with Draper and Westbrook.<sup>7</sup> Draper began by asking if Rubin was aware of the Phost-UIPU contract. Rubin acknowledged that he knew about that agreement, and Draper asked if ALP was now willing to enter into a 3-year collective-bargaining agreement with Respondent. Rubin replied that such was a contract would be unlawful. "Mr. Draper responded that if we were unwilling to sign a contract, that the union would then file an unfair labor practice claim and that they would picket the construction site." Rubin asked time for a caucus and, after he and Sacknitz returned, Rubin asked if it was true that Respondent intended to picket the site. "Mr. Draper indicated that that's what would happen." Rubin replied that he would speak to ALP officials about Draper's comments; Draper gave Rubin until the following Friday to answer. The meeting ended at this point.

Rubin testified that Draper asked if he knew that Phost's employees had been organized by the UPIU and that Phost had signed a contract. Rubin said that he knew. Draper said that Respondent continued to insist on a 3-year contract with ALP, and Rubin reiterated his doubts as the legality of that approach to a production agreement. Draper replied "that we either signed a [3-] year extension of the labor contract . . . or they would picket the construction site." The management representatives then left in order to caucus and, after returning, Rubin asked Draper to repeat the last statement. "He said, yes, 'ALP either signs a [3-] year extension of the labor contract, or else we will picket the construction site.'" Rubin replied that he had to discuss the matter with ALP officials, and the meeting ended. Following this meeting Rubin telephoned Klarquist, and "we discussed the threat."

Draper testified that he began the meeting by asking Rubin if he knew that the UPIU had been organizing Phost's employees and that Phost had recognized and bargained to an agreement with that union. Rubin replied

that he knew, and Draper then stated that he was not there for the purpose of bargaining about Phost but rather "for the specific purpose of renewing our existing labor agreement between 2362 and Alaska Wood Products." Rubin then stated that economics were not the issue; the major issue was the duration of the agreement. Draper replied that Respondent believed its demand was unlawful. Rubin responded that such was an area of controversy but that ALP would be willing to enter into a 1-year agreement. Draper replied that a 3-year contract was Respondent's final position inasmuch as the industry was structured in such a manner. Rubin asked where they could go from there, and Draper responded, "If we do not consummate an agreement of three years duration I would conclude that we are at impasse . . . I will picket the AWP mill with pickets if we do not get a [3-] year agreement." After this statement, Draper again volunteered the information that he was not there to negotiate for a Phost agreement. At that point, the ALP representatives left the room to caucus. Rubin returned after 15 minutes and said that there would be nothing further and that he had to confer with higher corporate officials. The meeting ended with Rubin saying he would contact Draper by the following Friday.<sup>8</sup>

Robert Westbrook gave rather sketchy testimony regarding this meeting. However, he did recall that Draper began by asking whether the ALP people knew that Phost had agreed on a collective-bargaining agreement with the UPIU and by stating that he was there to negotiate a 3-year agreement with ALP. Further, he recalled that Draper said, "[W]e'll picket AWP mill."

At the time of the hearing, work on the new sawmill had not been completed. Although unclear, it appears that, at least, some ducting and electrical work remain to be done as well as the installation and testing of the mill machinery. Draper admitted knowledge that portion of the remaining work was to be done by employees of subcontractors and that they were to be union-signatory subcontractors. To date, there has been no picketing at the AWP jobsite.

### C. Analysis

Both counsel for the General Counsel and for Phost contend that Draper's statement to Attorney Rubin, that either ALP enter into a 3-year collective-bargaining agreement with Respondent or the latter would picket the construction site, constituted a threat to picket Phost to force it to cease doing business with ALP or to force ALP to enter into an agreement with Respondent. They further contend that such a threat is blatantly violative of Section 8(b)(4)(ii)(B) of the Act when, as herein involved, ALP has no presence at the AWP jobsite. Contrary to this position, Respondent argues that Draper's statement to Rubin, that Respondent would picket the AWP mill if ALP did not enter into a 3-year agreement,<sup>9</sup>

<sup>7</sup> No Phost representatives appeared at this meeting. Nevertheless, Draper testified that Rubin was the spokesman for ALP "and, I assume, Phost Construction, at that time." There is no evidence that Rubin ever so represented his status at this meeting.

<sup>8</sup> As of the date of this meeting, according to Draper, he had no direct knowledge as to the state of the work being done at the AWP site.

<sup>9</sup> All parties concede that whether one credits the version of Respondent's witnesses or that of the General Counsel's witnesses, the legal effect would be the same.

does not constitute a threat within the meaning of Section 8(b)(4)(ii)(B) of the Act as such was "merely informative of a dispute which extended to the jobsite," that ALP has, indeed, maintained a presence on the jobsite during the construction work, and that rather than being an unoffending neutral party to the dispute, Phost and ALP are allies herein.

Section 8(b)(4)(ii)(B), insofar as is relevant herein, prohibits a union or its agents from threatening, restraining, or coercing secondary employers, where objects of such conduct are to force or require a secondary employer to cease doing business with the primary (or disputing) employer; or to force or require the primary to recognize and/or bargain with the union. As stated by a United States circuit court of appeals, Section 8(b)(4) ". . . was not meant to prohibit primary activity. [It was] directed only at secondary boycotts whose 'core concept' is union pressure directed at a neutral employer." *Griffith Company, et al. v. N.L.R.B.*, 545 F.2d 1194, 1199 (9th Cir. 1976). In concluding that a union has engaged in conduct violative of Section 8(b)(4)(ii)(B), the Board considers two elements as crucial to the violation: A cease doing business objective and coercion of the secondary employer to achieve the proscribed object. *Local 399, International Brotherhood of Electrical Workers (Illinois Bell Telephone Company)*, 235 NLRB 555, 559 (1978); *International Brotherhood of Electrical Workers, AFL-CIO; Local 134, International Brotherhood of Electrical Workers, AFL-CIO; Local 165, International Brotherhood of Electrical Workers, AFL-CIO (Illinois Bell Telephone Company)*, 179 NLRB 202, 204 (1969). Regarding the latter point, the Act reaches only threats, restraints, or coercion of a secondary employer. *N.L.R.B. v. Servette, Inc.*, 377 U.S. 46, 55, fn. 12 (1964); *International Hod Carriers, Building and Common Laborers' Union of America, Local No. 1140, AFL-CIO (Gilmore Construction Company)*, 127 NLRB 541, 545, fn. 6 (1960).

Herein, as expostulated by counsel for the General Counsel, the major premise of the complaint—and, indeed, the basis for much, if not all, of the legal arguments in the post-hearing briefs—is the alleged unlawful and coercive effect of picketing by Respondent at the AWP jobsite, if such occurred as threatened by Respondent. What appears to have been overlooked by this approach are the circumstances of Draper's threat. Was it directed, as required for a violation of Section 8(b)(4)(ii)(B) of the Act, to an unoffending neutral party (Phost), to the dispute between ALP and Respondent or was said threat directed toward the primary or disputing party—ALP? In asserting that Draper's conduct was secondary and directed at Phost, without citing any record testimony or other supporting facts, counsel for the General Counsel alleges that Attorney Rubin's status was that of the "common representative" of both Phost and ALP at the October 16 meeting. I do not think that the record warrants such a conclusion.

At the outset, there exists not a scintilla of record evidence as to the specific authority of Attorney Rubin to act as an agent or spokesman for Phost or as to whether such authority was ever represented to Respondent. At most, the record reflects a mere "assumption" by Draper that Rubin was the bargaining agent for Phost. Indeed,

Rubin identified himself at the hearing as a partner in the law firm which represents ALP and testified that he represented the interest of ALP in contract negotiations with Phost and labor negotiations with the Alaska Building Trades Council. Moreover, Rubin's conduct at the negotiating sessions with Respondent on July 21 and August 21 does not warrant a contrary conclusion as to his status. Thus, I believe that ALP desired these meetings in order to resolve its *own* lingering contractual problems with Respondent and, in the process, to assure that the construction work at the AWP site proceeded free of labor-related disputes. Viewed in this light, it seems clear that the real bargaining parties were ALP, represented by Rubin, and Respondent, with Phost as an interested observer, and that Rubin was representing the interests of ALP, and only peripherally those of Phost, when he offered to Respondent, as a counterproposal to the latter's demand for a 3-year production agreement with ALP, a 1-year construction contract with Phost. That Rubin spoke for ALP is also clear from his conduct at the August 21 session wherein he refused to accede to Draper's demand inasmuch as "we" have no production workers at the jobsite. Finally, my view of Rubin's status as only acting as an agent for ALP is supported by the entire circumstances herein—based on its own self-interests, ALP consented to attempt to persuade Phost to sign a labor agreement for work at the AWP site; ALP, in fact, persuaded Phost to do so; and in view of its desire to have the project completed expeditiously, ALP was in a position to gain the most by having the sawmill project completed free of labor strife.

However, assuming that Rubin was the "common representative" of Phost and ALP at the earlier bargaining sessions, a point about which I remain unconvinced, Rubin clearly represented *only* the interests of ALP during the October 16 meeting with Draper. Thus, prior to said date, Phost had, independently, recognized and bargained to an agreement with the UPIU covering the construction work, and at the meeting Draper, on at least two occasions, told Rubin that he (Draper) was not there to negotiate about Phost but only regarding a new collective-bargaining agreement with ALP. Further, the subject matter discussed pertained only to ALP and involved whether ALP would accept Draper's demand for a contract with a 3-year term and Rubin's counterproposal of an agreement with ALP for 1 year. Hence, while Draper again "assumed" that Rubin also represented Phost at this meeting, it is clear that the *only* parties to this meeting were ALP (Rubin) and Respondent. Accordingly, I believe that, when Draper uttered his threat to engage in picketing at the AWP jobsite, he did so to Attorney Rubin as the representative of ALP after Rubin, as the representative of ALP, refused Draper's demand for a 3-year contract. I believe that the foregoing, in the circumstances of this case, constituted nothing more than a threat of potentially unlawful picketing directed to a primary or disputing party—conduct which is *not* proscribed by Section 8(b)(4)(ii)(B) of the Act. Cf. *Local 399 (Illinois Bell Telephone Company)*, *supra*; *Gilmore Construction Company*, *supra*. I do not believe that, in any sense of the meaning of that section of the Act,

Draper's threat was made to the unoffending secondary employer (Phost) either directly or indirectly through a "common representative" of that party.<sup>10</sup> Accordingly, given the state of the record, and the factors upon which counsel for the General Counsel concentrated, he has not proven, by a preponderance of the evidence, that Respondent threatened, restrained, or coerced Phost in order to achieve the proscribed object or objects,<sup>11</sup> and I shall, therefore, recommend that the complaint herein be dismissed.

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<sup>10</sup> The fact that Rubin communicated Draper's threat to Klarquist immediately after Draper left the office is not determinative. Thus, unlike the situation in which a threat to an employee could reasonably be expected to be communicated to management officials, there is nothing in the record from which to draw the inference that Draper should have expected Rubin to communicate his threat to Klarquist. To the contrary, Rubin specifically stated that he would communicate Draper's ultimatum to ALP management officials and never mentioned Phost, which party, of course, was not involved at that time.

<sup>11</sup> I make no findings herein regarding the legality of Draper's threat had it been directed toward a neutral party to the dispute between ALP and Respondent or regarding the picketing itself, if such had occurred.

#### CONCLUSIONS OF LAW

1. Phost is an employer and a person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate Section 8(b)(4)(ii)(B) of the Act by threatening ALP with picketing of the AWP jobsite unless ALP agreed to enter into a 3-year collective-bargaining agreement.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following:

#### ORDER<sup>12</sup>

The complaint shall be, and is, dismissed in its entirety.

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<sup>12</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."